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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 43

PETER HARISIADES,

Petitioner,

vs.

EDWARD J. SHAUGHNESSY, DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION AT THE PORT OF NEW YORK,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR REHEARING.

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Of Counsel.

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PETITION FOR REHEARING.

Petitioner respectfully requests rehearing in the above-entitled cause and reconsideration of this Court's opinion of March 10, 1952.

In support of this petition, petitioner states that this Court's opinion in its impact upon the status of legally resident aliens, is one of the most far-reaching decisions in many years.

Basic to the Court's view, as expressed in the majority opinion, is the assumption that the admission and expulsion of aliens are matters entrusted solely to the political branches of the government. Consequently, the Court

recognizes no distinction, in the exercise of such power over aliens, between aliens outside the country seeking admission and aliens within the United States who have been lawfully admitted to permanent residence. Congress, as this Court now holds, may expel the latter as arbitrarily as it excludes the former, even though the latter enjoy certain constitutional protections to which the former as non-residents may not lay claim.

This view looks for support to two highly nebulous concepts: (1) "Powers inherent in the nature of sovereignty" as recognized in international law; and (2) The "ambiguous status" of the resident alien. There is no discussion in the opinion of the nature of the United States and of its constitutional form of government as distinguished from other sovereign states and their various forms of government. Nor is there any discussion or consideration of the status of any particular alien or group of aliens as distinguished from aliens in general. The result in that sweeping powers are given judicial recognition because all sovereign states are assumed to possess them, and certain aliens are regarded as subject to grave disabilities because aliens in general are assumed to suffer from them.

The majority of the Court apparently adopts these views because it regards them as consistent with "the traditional power of the Nation over the alien" and feels that it ought to "leave the law on the subject as [it] finds it." This means, of course, that the extreme views expressed in *Fong Yue Ting* v. *United States*, 149 U. S. 698, despite strong dissents then and many subsequent expressions of qualification and disapproval, are reaffirmed in their entirety. It means, moreover, that the constitutional protections which the resident alien has, and to which this Court points, in the final analysis are meaningless, since any alien, no matter how long his residence, remains

subject to expulsion at any time, for any reason or for none. See particularly the language of Mr. Justice Brewer and Mr. Justice Field, dissenting, 149 U. S. 733, 743, 756, 760.

Why a power so nearly absolute as that this Court concedes to the political branches of the government must adhere in the United States as a sovereign nation, or why the constitution fails to protect the resident alien at the one juncture where such protection is needed to give significance to other constitutional guarantees are questions this Court's opinion does not answer or consider.

The simple inescapable fact is that the alien is a "ticket-of-leave" man subject to the most fanciful of political whims and the most irrational of political or racial prejudices. While some prior decisions of this Court facilitate such a result, the spirit of our democratic institutions and the broad scope of the Bill of Rights would seem to repudiate it.

In presenting this petition, counsel certify that it is submitted in good faith and not for purposes of delay.

Respectfully submitted,

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Attorneys for Petitioner.

COTTON, FRUCHTMAN & WATT,
Of Counsel.

March 25, 1952.